



Maricopa County Environmental Services Department Stormwater Regulation Public Comments

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Salt River Project

[Note: Maricopa County responses to the comments are included throughout the document in brackets in bold, italic font]

March 24, 2009 submitted Electronically and by US. Mail
Mr. Stan Snitzer
Stormwater Quality Program Coordinator
Maricopa County Environmental Services
1001 N. Central Ave., Suite 201 Phoenix, AZ 85004

Re: Salt River Projects comments regarding proposed Maricopa County Stormwater Quality Management and Discharge Control Regulation

Dear Mr. Snitzer:

Salt River Project ISRPI has reviewed the proposed Maricopa County Stormwater Quality Management and Discharge Control Regulation (Proposed Maricopa County Regulation) recently published in the Arizona Administrative Register. If promulgated as a final rule, this regulation will require construction site operators to prepare and implement costly stormwater discharge prevention plans for projects that, in many locations will never discharge, or have the potential to discharge, to a water of the U.S.

The draft regulation also proposes to establish a fee-based stormwater permitting program that will require applicants to submit detailed stormwater management plans for review and approval; mandate final stabilization inspections before an applicant may demobilize from the project site; and subject the applicant to civil or criminal enforcement actions for alleged violations-all which are requirements not currently required or enforced by other MS4 permittees. For these reasons, SRP urges the County to suspend development of this regulation and to not seek Board of Supervisor approval until substantial revisions can be made. The reasons for SRP's request are outlined below.

The proposed regulation broadens the scope of the Clean Water Act (CWA) to include surface waters that are not jurisdictional under EPA'S National Pollutant Discharge Elimination System (NPDES) or ADEQ'S Arizona Pollutant Discharge Elimination System (AZPDES).

Under EPA'S NPDES program facilities that are (i) engaging in industrial activity, (ii) that can discharge pollutants from a point source, *and* (iii) if the discharge can enter a water of the U.S., must apply for and obtain coverage under an individual discharge or general discharge permit. These requirements are conjunctive. If a facility is engaging in industrial activity, but cannot discharge pollutants from a point source, or can discharge pollutants from a point source but not to a water of the U.S., the facility is not required to obtain a permit.

In addition, while EPA'S interpretation of the definition of a water of the U.S. is extremely broad, it does exclude certain man-made stormwater conveyances and features. In the preamble of the Phase I Stormwater Rule, EPA stated that stormwater "flows which are channeled into basins and which do not discharge into waters of the U.S. are not addressed by today's rule." Clearly this statement shows that EPA did not intend to regulate stormwater management facilities that do not discharge to waters of the U.S.

ADEQ's AZPDES program also contains similar language regarding jurisdictional status of natural versus man-made structures. The Construction General Permit Fact Sheet provides direction as to what constitutes a receiving water versus what is interpreted to be only a man-made structure:

A receiving water is a natural watercourse into which stormwater would flow in a storm event and includes dry washes, streams, tributaries and other waters of the U.S. Man-made structures such as retention basins, storm sewer systems or city storm drains are not receiving waters.

Furthermore, ADEQ'S definition of a *municipal separate storm sewer* includes the terms, "...a conveyance or system of conveyances that *discharges to waters of the United States*." 5

It is very clear that the intent of both EPA'S and ADEQ'S stormwater regulations are to regulate the discharge of pollutants from point sources to waters of the U.S. If a facility engaging in industrial activity cannot discharge into a water of the U.S., the facility is not required to obtain permit coverage.

Under the Proposed Maricopa County Regulation, the definition of what constitutes jurisdictional receiving water, however, is not as clear. The regulation proposes definitions for a *drainage system*, *storm drainage system*, *municipal separate storm sewer system*, *water of the*

County and water of the US. The regulation also proposes language that suggests if a facility can discharge stormwater to any of the define surface waters, or drainage features, the facility is required to obtain permit coverage regardless of whether the receiving water is a water of the U.S.

Again, this requirement is entirely inconsistent with EPA'S and ADEQ's interpretations regarding the types of receiving waters subject to permit coverage.

In many, if not most, locations of urbanized unincorporated Maricopa County, natural desert drainage features were altered decades ago to accommodate irrigation or residential development or to prevent flooding. These actions have resulted in a system of private and public stormwater management facilities that channel most stormwater flows to retention basins or flood control structures that do not contain outfalls. These private and public stormwater management facilities that do not discharge to waters of the U.S. should not be subject to the proposed rule.

SRP also opposes the proposal to initiate a fee-based permitting, inspection and enforcement regulation for projects undertaken within the county's MS4. SRP routinely constructs facilities within other MS4 jurisdictions. Our experience demonstrates that no other municipality requires a construction site operator to pay a dedicated fee for stormwater construction and post-construction permitting, subject their project to mandatory "final stabilization" inspections or be subject to civil or criminal enforcement

for alleged violations. In most cases, MS4 permittees require the construction site operator to provide proof of coverage under ADEQ'S Construction General Permit (CGP), e.g., submit of a Notice of Intent or Authorization Certificate, as part of their municipal stormwater program.

[Response: The County is subject to the conditions of Arizona Pollution Discharge Elimination System (AZDPES) permit number AZG2002-002. Permit condition I.C.1., "The permittee (Maricopa County) shall prohibit all types of non-stormwater discharges into its MS4 unless the discharges are authorized..."

A regulated municipality may choose its own method of covering the costs of performances required by the State of Arizona permit. As provided for all regulated counties in A.R.S. 41-371, Maricopa County chooses to use a user-fee system to provide a mechanism for recovery of costs related to plan review and site inspections requested by owners or operators.]

For these reasons, SRP urges the County to suspend the development of the draft regulation and not seek Board of Supervisor approval at the April 1, 2009 meeting until the following changes are implemented:

- The defined terms – *drainage system, storm drainage system and water of the County* - should be deleted.

[Response: Reference to "waters of the County" have been removed from the regulation.]

- The Applicability sections should be revised to include language clarifying that:
 - Only those specific segments of the County's MS4 system that can convey stormwater to an outfall that discharges to a water of the U.S., are subject to the Regulation.
 - If a construction site operator cannot discharge stormwater from their project site to a water of the U.S., via a county MS4, the construction site operator is not subject to the regulation

[Response: The County is subject to the conditions of Arizona Pollution Discharge Elimination System (AZDPES) permit number AZG2002-002. Permit condition I.B.1.a. describes the permit coverage. Section 603.2 covers your comment: Exemption - Construction projects where the operator can prove that there is no reasonable probability that Stormwater can leave the site.]

- A complete list of county MS4 stormwater conveyances that are connected (outfall) to waters of the U.S. should be published as an appendix to the Regulation.

[Response: The County is in the process of developing a storm water system map showing the location of all outfalls.]

- All sections that discuss mandatory permit application review and approval fees, inspections, and enforcement actions should be removed.

[Response: Fees will be set to charge customers for the cost of the regulatory program. Enforcement is required by AZDPES AZG220-002.]

- Language should be added to the regulation that allows a construction site operator to demonstrate compliance with the county's stormwater management program by submitting a copy of a CGP Notice of Intent (NOI), a CGP Authorization Certificate, a CGP Waiver Certificate or a sided self-certification document stating the construction site, due to its location, cannot discharge stormwater to a water of the U.S.

[Response: Exemptions to the Construction Site Stormwater Pollution Control provisions are listed in section 603, Exemptions.]

If you have any questions regarding less comments or recommendations, please contact Jim Kudlinski, of my staff, at 602-236-2351. I look forward to receiving your response.

Sincerely,

Kevin Wanttaja
Manager, Environmental Services

Arizona Public Service

[Note: Maricopa County responses to the comments are included throughout the document in brackets in bold, italic font]

March 27, 2009

Stan Snitzer
Stormwater Quality Program Coordinator
Maricopa County Environmental Services
1001 N Central Ave, Suite 201 Phoenix, Arizona 85004

RE: Maricopa County's Proposed Stormwater Quality Management and Discharge Control Regulation

Dear Mr. Snitzer:

Arizona Public Service Company ("APS") has reviewed the Notice of Proposed County Regulation for Maricopa County Stormwater Quality Management and Discharge Control Regulation ("Proposed regulation"). The Proposed Regulation was published in the Arizona Administrative Register on February 27, 2009 with a 30 day public comment period (15 Ariz. Admin, Reg. 434). APS understands from the Notice that this Proposed Regulation may be on the Board of Supervisors meeting agenda for April 1, 2009.

APS supports the County in its desire to comply with its stormwater requirements under the "Arizona Pollutant Discharge Elimination System General Permit for Discharge from Small Municipal Separate Storm Sewer Systems ("MS4s") to Waters of the United States" ("AZPDES MS4 General Permit". As one of Arizona's largest electric utilities, APS is dedicated to protecting the water quality of our state's streams and rivers, and is committed to environmental stewardship and sustainable operations. Given the rapid growth in the region and the need to construct the critical infrastructure necessary to meet the increasing demand for electricity, APS is constantly involved in both construction projects and facility operations that may be subject to this Proposed Regulation.

However, APS has significant concerns with the content of the Proposed Regulation and their potential impact and urges the County to expand its public participation and outreach process. Based on these concerns, APS respectfully requests that the County suspend further development of the Proposed Regulation until stakeholder input can be considered and to allow for public participation in

keeping with the Intent of both federal and state Stormwater regulatory programs, as noted in the Proposed Regulation (Chapter 1, 103) and in 40 CFR 122.34.

While APS has comments on many aspects of the Proposed Regulation (see the attached Specific Comments), the following provides an overview of our primary concerns:

- The scope of the Proposed Regulation exceeds the requirements of the federal and state programs, including the AZPDES General Permit, and, in portions, lacks a nexus to the County's MS4 and to the stated purpose of the Proposed Regulation. In some cases, the Proposed Regulation could apply to water features held wholly on private property (see proposed definition of "Waters of the County" in the attached comments).
- The proposed definitions are not consistent with those of the AZPDES MS4 General Permit, which triggered the Proposed Regulation. The inconsistencies create confusion and overlap, and they expand the program's authority well beyond what the AZPDES MS4 General Permit contemplates.
- The Proposed Regulation includes punitive enforcement for certain previously approved connections without a grace period or an option for a compliance assistance process.
- The Proposed Regulation includes a Spill Notification section that is more stringent than existing federal and state spill requirements and, in most cases, would be disproportionate to the release. While APS supports notification to the County, as an enforceable provision, this section needs thoughtful review, and where possible and appropriate, alignment with existing spill notification requirements.

APS respectfully requests that Maricopa County consider our comments in the development of the final Regulation. If you have any questions please call Kris Paschall at (602) 250-3451.

Sincerely,

Chris Walker
Manager, Environmental Consulting
Arizona Public Service Company

APS - SPECIFIC COMMENTS

Chapter 2 - Rules of Construction and Interpretation

1. County Permits and Approvals - 206(1)

An application for any discretionary permits or approvals issued by the County shall be accompanied by plans demonstrating how the development project will comply with the requirements of this Regulation.

There is no description of the application process and what is required to be in the "plan" The term "plan" is vague in that it could refer to a Stormwater Pollution Prevention Plan (SWPPP) as defined in Chapter 3, a Stormwater Management Plan (SWMP) as defined in Chapter 3, a Stormwater Site Plan (SWSP) as referenced in Section 602(5)(A), or could be something else entirely. The Regulation should provide concise descriptions of what the County will require in its application process.

[Response: The SWPPP that the owner or operator has prepared in accordance with the requirements of their ADEQ construction general permit is to contain the plan for utilization of Best Management Practices (BMPs) for all phases of construction to include pre-construction. ADEQ SWPPP requirements are included in the General Permit for Construction. Post-construction requirements are also covered in the requirements of the ADEQ construction general permit. The Maricopa County construction requirements are listed in chapter 6 of the Regulation. The Maricopa County post-construction requirements are listed in Chapter 11 of the Regulation. Administrative guidance for submission to the Department will be provided by the Department.]

Chapter 3 - Definitions

2. The proposed definition of "Discharge" is:

When used as a verb, means to allow any direct or indirect addition or introduction of any pollutant, Stormwater, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into Waters of the U.S. When used as noun, "discharge" means the pollutants, Stormwater or non- Stormwater that is discharged. [Chapter 3, 10]

APS requests that the proposed definition for "Discharge" be replaced with the AZPDES MS4 General Permit (AZG 2002-002) definition to provide consistency across local, state, and federal definitions:

"Discharge" when used without qualification means the discharge of a pollutant.

[Response: The definition for Discharge has been changed to the definition in A.R.S. 49-255.]

3. The proposed definition of "Illicit Connections" is;

A. Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter any Storm Drainage System including but not limited to any conveyances that allow any non-Stormwater discharge including sewage, process wastewater, and wash water to enter any Storm Drainage System and any connections to any Storm Drainage System from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized agency, or

B. Any drain or conveyance connected from a commercial or industrial land use to any Storm Drainage System that has not been documented in plans, maps, or equivalent records and approved by an authorized regulatory or enforcement agency. [Chapter 3, 17]

The proposed definition, as written in 3(A), states that any drain or conveyance that allows an illegal discharge to enter the Storm Drainage System would be an illicit connection. This proposed definition is too inclusive since some conveyances may receive discharges that are not intentional. For example, if a gutter conveys an illegal discharge, then the gutter becomes an illicit connection.

The proposed definition, as written in 3(B), may be problematic for older facilities. Many facilities operating today that date back to the 1950s, 1940s, and older, may not have all design drawings. By not having design drawings, drains and conveyances that connect to any Storm Drainage System will be an illicit connection under this Proposed Regulation. Additionally, without drawings, owners and operators may not know where all drains and conveyances terminate.

Both proposed definitions include "Storm Drainage Systems" and, as discussed below in Comment No. 6, include private systems that may not connect to the MS4. APS requests that "Storm Drainage System", as used in both proposed definitions be replaced with "Maricopa County's MS4".

[Response: Maricopa County is required to comply with the provision of AZPDES General Permit for Discharge from Small Municipal Separate Storm Sewer Systems, AZG2002-002. Part V.B.3. of the permit, Illicit Discharge Detection and Elimination, requires the County to prohibit non-stormwater discharges to the storm sewer system. Section 502.5 provides for a process for the Department to notify an owner if an undocumented connect is detected, and allows the owner a reasonable time to respond.]

4. The proposed definition of "Impervious Surface" is:

A surface which has been compacted or covered with a layer of material so that it is resistant to infiltration by water. It includes semi-pervious surfaces such as compacted clayey soils, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots, and other similar surfaces.

"Net Increase of Impervious Surface" refers to the difference between the existing impervious coverage and the total impervious surface proposed. [Chapter 3, 18]

This proposed definition is somewhat unclear in that an "Impervious Surface" includes "semi-pervious surfaces". EPA literature refers to "Impervious Surface" as: Impervious surface encompasses land areas covered by roofs, roads, parking lots and other materials which keep rainfall and snow from penetrating the ground. APS requests that the proposed definition of "Impervious Surface" be replaced by the EPA reference above in order to provide consistency across local, state, and federal programs.

[Response: Technical data reviewed by the County shows that disturbed, recompacted soils in arid environments have low infiltration rates that are much closer to the infiltration rates of streets than those of undisturbed or landscaped areas.]

5. The proposed definition of "Pollutant" is:

Any agent introduced to Stormwater or non-stormwater through human activity that may cause, potentially cause, or contribute to the degradation of water quality. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations, so that same may cause or contribute to pollution; floatables, pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; dredged spoil, rock, sand or silt; and noxious or offensive matter of any kind [Chapter 3, 33]

APS requests that the proposed definition for "pollutant" be replaced with the AZPDES MS4 General Permit definition to provide consistency across local, state, and federal definitions. The following is the definition provided in R18-9-A901:

"Pollutant " means dredged spoil, solid waste, Incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C 2014 et seq.)), heat, wrecked or discarded equipment, rock, sand cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:

- a. Sewage from vessels: or*
- b. Water, gas, or other material that is Injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of this state, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources [40 CFR 122.2]*

[Response: The definition contains more detail than the ADEQ permit AZG-2002-002 definition in order to provide clarity to the regulated community. All items mentioned in the definition are a subset of the items listed in the AZG-2002-002 permit list.]

6. The proposed definition of "Storm Drainage System" is:

Public and private drainage facilities other than sanitary sewers within the unincorporated area of Maricopa County by which stormwater is collected and/or conveyed to receiving waters including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures. [Chapter 3, 39]

Since "Storm Drainage System" includes private drainage facilities, and the proposed definition does not specify that these drainage systems connect to the County's MS4, it appears that the County intends to assert jurisdiction over private drainage systems that connect to "receiving waters" rather than solely to its MS4. (Also, see Comment No. 8)

The Proposed Regulation should be limited to discharges to the County's jurisdiction over its MS4.

[Response: The definition "Storm Drainage System" is intended to regulate water that is discharged or has the potential to discharge from a public or private site to the County MS4, unless regulated by NPDES permit or otherwise exempted.]

7. The proposed definition of "Stormwater Management Plan" is:

A document submitted on a Department form or in a Department approved format which describes the Best management Practices and activities and measures to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions and measures to eliminate or reduce pollutant discharges to Stormwater, Stormwater Drainage Systems, and/or receiving Waters of the US to the maximum extent practicable (MEP)

This proposed definition should either be deleted as duplicative of the Stormwater Pollution Prevention Plan or be modified to address "pollutants" that enter the County's MS4 and exclude the undefined term "contamination"

[Response: The Stormwater Management Plan is a document that is prepared as part of the post-construction requirements of the Regulation. The Stormwater Pollution Prevention Plan is prepared for compliance with construction site runoff control prior to and during performance of construction activity.]

8. The proposed definition of "Waters of the County" is:

All waters within the jurisdiction of this County including all streams, perennial or intermittent, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, arroyos, drainage systems, and all other bodies or accumulation of water, surface

and underground, natural or artificial public or private, situated wholly or partly within or bordering upon the County. [Chapter 3, 45]

The County is creating a new classification of regulated waterbodies which APS believes is unnecessary to accomplish the County's goals with this Proposed Regulation. The County is proposing to regulate wetlands, irrigation systems, naturally occurring and man-made accumulations of water, and underground bodies of water (i.e. groundwater), regardless if the identified "waterbody" enters a Water of the U.S. via the County's MS4.

EPA defines "Waters of the U.S." as:

- 1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;*
- 2. All interstate waters including interstate wetlands;*
- 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:*
 - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or*
 - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;*
- 4. All impoundments of waters otherwise defined as waters of the United States under this definition;*
- 5. Tributaries of waters identified in paragraphs (1) through (4) of this section;*
- 6. The territorial sea;*
- 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this section.*

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition are not waters of the United States.(40 CFR 230.3(s))

EPA has specified that *flows which are channeled into basins and which do not discharge into waters of the U.S are not addressed by today's rule.* [Phase I Stormwater Rule, FR Vol 55, No. 222, 47996]

ADEQ defined "Receiving Waters" in the AZPDES General Permit (AZG2008-001) for Discharge from Construction Activities to Waters of the United States ("AZPDES Construction General Permit) as *Waters of the U.S. and conveyances thereto (including MS4s).*

It is clear that the intent of the state and federal stormwater programs is to regulate the discharge of pollutants to Waters of the U.S. The Proposed Regulation should only apply to potential discharges to the County's MS4 that ultimately discharge to a Water of the U.S. APS requests that the proposed definition of "Waters of the County" be removed from the Proposed Regulation.

[Response: References to “Waters of the County” have been removed from the Regulation]

Chapter 4 – Applicability

9. APS requests that the word "water" be replaced with "discharge". APS also requests that "unauthorized" be added prior to the word "non-Stormwater" to address the permitted non-stormwater exclusions.

Additionally, the Proposed Regulation applies to *all water entering the storm drainage system*, and as discussed in Comments 6 and 8, the Regulation should only apply to "discharges" to the County's MS4 that ultimately discharge to a Water of the U S. APS proposes the following language:

This Regulation applies to all Stormwater discharges entering the MS4 in the urbanized areas of the County and generated on any developed and undeveloped lands unless explicitly exempted in this Regulation. Stormwater discharges and any unauthorized non-Stormwater may not be discharged to the County's MS4 within the urbanized unincorporated areas of the County unless allowed under this Regulation. This section is not intended to control pollution from incorporated areas of the County nor is it intended to apply to the non-urbanized areas of the County as defined herein [Chapter 4]

[Response: AZPDES AZG2002-002, Part 1.C.1 prohibits all types of non-stormwater discharges into the County MS4 except as specifically exempted. The term “discharge” is not used here due to confusion that may result due to the narrow definition in the Regulation required by Arizona statute.]

Chapter 5 - Illicit Non-stormwater Discharges and Connections

10. Prohibition of Non-Stormwater Discharges - 501(1)

No person shall throw, drain, or otherwise discharge, cause, or allow others under its or their control to throw, drain, or otherwise discharge into the MS4 or into the Storm Drainage System within the MS4 any pollutants or wafers containing any pollutants, other than Stormwater.

APS suggests that the County consider the approach taken by the AZPDES Construction General Permit. The Construction General Permit authorizes discharges that are in compliance with the permit (Part I.C) and prohibits those that are not. A categorical prohibition to discharge of any and all "pollutants" as defined in the Proposed Regulation is impractical. APS requests that the County delete the proposed prohibition and instead adopt the approach taken by the AZPDES Construction General Permit.

[Response: The exemptions are listed in Section 501.2.]

11. Prohibition of Non-Stormwater Discharges - 501(2)(A)

The following discharges are exempt from discharge prohibitions established by this Regulation:

Water line flushing, landscape irrigation, diverted stream flows, rising groundwater's, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.

1. *Discharges or flow from firefighting, and other discharges specified in writing by the Department as being necessary to protect public health and safety.*
2. *Discharges associated with dye testing; however, this activity requires a verbal notification to the Department prior to the time of the test.*

The language regarding allowable non-storm water discharges should be moved to its own Chapter or section titled "Authorized Non-Storm Water Discharges". This would be consistent with the AZPDES Construction General Permit Part I.C.2 and provide clarity regarding applicability.

[Response: The County followed the example of the Clean Water Act, 40 CFR 122.34.b.3.iii, where the listed exemptions are included in the illicit discharge section.]

12. Prohibition of Non-Stormwater Discharges - (501)(2)(B)

This discharge prohibition shall not apply to any non-Stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to a Storm Drainage System.

Please add "AZPDES" to 501(2)B.

[Response: In the revised version of the Regulation, the word “discharge” has been replaced by the word “drainage”. NPDES are authorized discharges. An addition of the term “AZPDES” would be confusing to the regulated community. For example, an owner subject to the Arizona AZPDES Construction General Permit may not be exempt from County regulation.]

13. Prohibition of Illicit Connections - 502(1)

The connection, use, maintenance or continued existence of illicit connections to the storm Drainage System is prohibited.

Please delete "continued existence" of illicit connections in the sentence above. This is redundant with 502(2).

[Response: The Department prefers to retain the wording for clarity.]

14. Prohibition of Illicit Connections - 502(2)

This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

The Proposed Regulation should include a grandfather clause, a grace period, and/or a compliance assistance process so that companies and individuals have the opportunity to comply with the connection provisions within the Proposed Regulation.

[Response: AZPDES AZG2002-002 was promulgated in 2002. There is no provision for the requested grandfather clause for owners to continue to deliver pollutants into the County MS4. The Department will seek compliance, as required by the permit. However, the goal of the Department is compliance, not enforcement. Section 502.5 provides for a process for the Department to notify an owner if an undocumented connect is detected, and allows the owner a reasonable time to respond.]

15. Prohibition of Illicit Connections - 502(4)

Improper connections in violation of this Regulation must be disconnected and redirected to an appropriate waste disposal system.

The Proposed Regulation do not allow for onsite retention which is generally encouraged for stormwater management. Please add the following "...or retained onsite." to 502(4). APS proposes the following language;

Improper connections in violation of this Regulation must be disconnected and redirected to an appropriate waste disposal system or retained onsite.

[Response: A properly designed and maintained system of strict, onsite only retention can also qualify as BMP for an appropriate waste disposal system.]

16. Prohibition of Illicit Connections - 502(5)

Any drain or conveyance that has not been documented in plans, maps, or equivalent, and which may be connected to the Storm Sewer System, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Department requiring that such locating be completed . . .

The Proposed Regulation should include a grandfather clause, a grace period, and/or a compliance assistance process so that companies and individuals have the opportunity to comply with the connection provisions within the Proposed Regulation. In the language above, the County may issue a Notice of Violation where an actual connection and/or discharge have yet to be established.

Please modify the language to remove the term "violation" and replace "Storm Sewer System" with "County MS4".

Any drain or conveyance that has not been documented in plans, maps, or equivalent, and which may be connected to the County MS4 shall be located by the owner or occupant of that property upon receipt of written notice from the Department requiring that such locating be completed . . .

[Response: AZPDES AZG2002-002 was promulgated in 2002. There is no provision for the requested grandfather clause for owners to continue to deliver pollutants into the County MS4. The Department will seek compliance, as required by the permit. However, the goal of the Department is compliance, not enforcement. A notice of violation does not automatically lead to a penalty.]

Chapter 6 - Construction Site Stormwater Runoff Pollution Control

17. Throughout this Chapter, the term "disturbance" should be replaced with "construction activity" to more accurately reflect the scope of the Chapter.

[Response: The term "construction activity" was added to 602.3 as a modifier to disturbance.]

18. Introduction – 601

With few exceptions, these requirements will include the development and implementation of a Stormwater Pollution Prevention Plan (SWPPP) for every construction activity as defined herein within the urbanized unincorporated areas of the County. That SWPPP must be approved by the State. SWPPPS may be reviewed at the construction site by the Department. Stormwater treatment measures known as "Best Management Practices " or BMPs may be required along with inspections by the County or State to determine compliance with the SWPPP and the Installation and management of the BMPs.

This provision is in conflict with the AZPDES Construction General Permit, which states: *The SWPPP is not required to be submitted to ADEQ (unless the project will discharge to an impaired or unique water as described in Part I.D.5 and I.D.6) but shall be retained and made available in accordance with Part III.G*

[II(A)(2)(b)].

APS requests that this Proposed Regulation be replaced with the language from the AZPDES Construction General Permit in order to provide consistency.

In addition, please replace the term "treatment" with "control" APS also suggests deleting "State" as this Proposed Regulation relates to County authority. APS proposes the following language:

With few exceptions, these requirements will include the development and implementation of a Stormwater Pollution Prevention Plan (SWPPP) for every construction activity as defined herein within the urbanized unincorporated areas of the County. SWPPPs may be reviewed at the construction site by the Department. Stormwater control measures known as "Best Management Practices " or BMPs may be required along with inspections by the County to determine compliance with the SWPPP and the installation and management of the BMPS.

[Response: The Department has provided modified language in Chapter 6, part 601 regarding State construction activities to inform owners that due to ADEQ permit AZG2002-002 requirements, the County may perform some regulatory activities similar or identical to those that may be performed by the State. Wording has been provided to indicate to owners that in addition to the County, the SWPPP may also be reviewed by the State.]

19. Construction Site Permits - 602(3)

No Disturbance of the site is allowed until the Stormwater permit has been issued.

The County's proposed definition of "disturbance" is:

The result of altering soil from its native or stabilized condition thereby rendering it subject to movement or erosion by water to potentially become, or becoming a pollutant in site Stormwater runoff also means soil disturbance. (Chapter 3, 11)

This proposed definition of "disturbance" could restrict access to the site prior to obtaining a permit since driving on the property could "disturb" the site. APS proposes the following language; *No construction activity (as defined in Chapter 3) is allowed on the site until the Stormwater permit has been issued.*

[Response: The term "construction activity" was added to 602.3 as a modifier to disturbance.]

20. Construction Site Permits - 602(5)(A)

Submit to the Department a pre-construction and construction phase Stormwater Site Plan no later than 30 working days prior to the actual start of construction for standard turnaround times for applications. For those projects requiring 15 days or less in the permit turnaround time, the County provides for an expedited processing with additional fees being applied.

A definition of "Stormwater Site Plan" should be provided in Chapter 3.

Given the fee structure for an expedited review, the number of days to conduct a review should be limited to 5 working days.

[Response: Administrative guidance for submission to the Department will be provided by the Department. A maximum expedited review time of five working days would require a higher fee. Many commenters requested that the Department minimize fees.]

21. Construction Site Permits - 602(6)

In this section and in 602(4), the County requires a SWPPP on site at all times. As many sites may not be staffed at all times, nor have a trailer or other secure location on site, APS suggests that the County adopt an approach consistent with the AZPDES General Permit (Part III.G.2) (Add selected Part 111.G.2 text)

If the County finds that the SWPPP is not being followed or BMPs not properly installed and maintained, the owner has 72 hours to address the notification of deficiencies.

This provision is in conflict with the AZPDES Construction General Permit which states: *If existing BMPs need to be repaired or modified or if additional BMPs are necessary, implementation shall be completed within 7 calendar days or before the next rain event (whichever is sooner)...* 11V(1)(2)]. APS requests that this Proposed Regulation be replaced with the language in the AZPDES Construction General Permit in order to provide consistency.

[Response: The time limit requirement in 602.6 for the owner or operator to address deficiencies has been changed to 7 days]

22. Termination of Coverage – 605

Coverage under the construction permit will be canceled when a notice of termination is filed and an inspection by the Department has confirmed that the entire site has been stabilized and landscaping and paving complete. The Owner or Operator must continue to meet the requirements of any post-construction permits.

APS requests that the Regulation provide a specified time limit in which the County will complete the close out inspection.

[Response: The Department will specify the time limit administratively.]

23. Right of Entry for Inspection and Sampling - 606(1)(C)

The Department shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Department to conduct monitoring and/or sampling of the facility's Stormwater discharge.

Please modify the language so that the monitoring and/or sampling of a discharge is targeted at the actual discharge to the MS4. APS suggests the following:

The Department shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Department to conduct monitoring and/or sampling of the facility's Stormwater discharge at the location where such discharge enters the MS4.

[Response: 606.1.C in the February 27, 2009 version has been deleted.]

24. Right of Entry for Inspection and Sampling - 606(1)(F)

Unreasonable delay in allowing the Department access to a permitted facility is a violation of a Stormwater discharge permit and of this Regulation. A person who is the operator of a facility with an NPDES or AZPDES permit to discharge Stormwater associated with industrial activity violates the permit terms (the person denies the Department reasonable access to the permitted facility for conducting any activity authorized or required by the Regulation.

Please elaborate on County expectations regarding access and "unreasonable delay". APS owns secure sites which do not have onsite staff; immediate access may not always be available. Please revise 606(1)(F) to identify reasonable access times and notice.

[Response: The Department has been advised by Counsel that a finding of "unreasonable delay" is based on behavior by the owner or operator to avoid providing access; for example, failure to return messages during business hours, stalling tactics or failure to keep appointments.]

Chapter 7 - Industrial Activity Discharges

25. Submission of NOI to Department 701(1)

Any person subject to an industrial activity NPDES or AZPDES discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Department prior to the allowing of discharges to the County MS4.

The proposed language above extends County enforcement over state and federal permits. Please modify the language to focus on demonstration to the County of compliance with appropriate stormwater permits issued by other agencies. APS suggests the following:

Any person subject to an industrial activity NPDES or AZPDES discharge permit may be required to provide proof of compliance with said permit in a form acceptable to the Department prior to the allowing of discharges to the County MS4.

[Response: Section 701.1 has been changed in response to suggestions.]

Chapter 8 - Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices

26. *Any activity, operation, or facility that may cause or contribute to pollution or contamination of Stormwater, any Storm Drainage System, the County MS4, Waters of the County, or Waters of the U.S. in the unincorporated urbanized areas of the County must implement Best Management Practices for Stormwater. [Chapter 8, Section 1]*

This Proposed Regulation attempts to regulate "Stormwater" and "Waters of the County" regardless if those waters enter the County's MS4, and "Storm Drainage System's", regardless if they connect to the County's MS4.

Since the objective of this Regulation is to regulate contribution of pollutants to the MS4 ... [104(1)], APS proposes the following language:

Any activity, operation, or facility that discharges a pollutant to the County's MS4 in the unincorporated urbanized areas of the County must implement Best Management Practices for Stormwater.

[Response: The term “Waters of the County” has been removed from the Regulation.]

27. Chapter 8 (2)

"Any person responsible for a property or premise that is, or may be, the source of an illegal non-stormwater discharge as described in subsection A, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent further discharge of pollutants. "

- Please clarify to what "subsection A" refers.
- Please remove the phrase "may be" as it is very broad.
- Please use "and/or" to provide the County and permittee with flexibility in BMP selection.

[Response: The subsection number was changed to “1”. The terminology “may be” is necessary to be consistent with subsection 1, and is further clarified at the end of section 2 with the wording “further drainage of pollutants.” In response to suggestions, the modifiers “structural and non-structural” have been removed.]

Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of Stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a Stormwater management plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

- Please include "AZPDES" permit.
- Please replace "Stormwater Management Plan" with "Stormwater Pollution Prevention Plan" (SWPPP). As noted previously, SWPPP is a defined term.

[Response: NPDES are authorized discharges. Inclusion of “AZPDES” would be confusing to the regulated community. The last sentence (containing the wording: “Stormwater management plan”) has been removed.]

Chapter 9 - Notification of Spills

29. *Notwithstanding other requirements of law, as soon as any person responsible for a facility, site or operation, including construction sites or responsible for emergency response for a facility, site or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into a Storm Drainage System, the County MS4, or the Waters of the U.S. shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via dispatch services In the event of a release of non-hazardous materials, said person shall notify the Department in person, by phone or email or facsimile later than the next day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Department within ten calendar days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the action taken to prevent its recurrence. Such records shall be retained for at least one year or as may otherwise be required by applicable state or federal law.*

The CERCLA spill reporting text reads:

"Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 9602 of this title, immediately notify the National Response Center established under the Clean Water Act [33 U.S.C. 1251 et seq.] of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State."

And 40 CFR 110 reads:

"Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as he or she has knowledge of any discharge of oil from such vessel or facility in violation of section 311(b)(3) of the Act, immediately notify the National Response Center (NRC) (800-424-8802; in the Washington, DC metropolitan area, 202.-426-26753. If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated On-Scene Coordinator (OSC) for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the predesignated OCS immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible. The reports shall be made in accordance with such procedures as the Secretary of Transportation may prescribe. The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR part 153, subpart B and in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300, subpart E."

And 40 CFR 302.6 reads:

" (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he or she has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24-hour period, immediately notify the National Response Center ((800) 424-8802) in Washington, DC (202) 426-2675 or (202) 267-2675; the facsimile number is (202) 267-2165, and the telex number is 892427)."

This broad language of the Proposed Regulation applies to facilities and operations, as well as construction sites, for a spill that "may result" in discharge. Additionally, this Section includes drainage systems other than the County's MS4. Chapter 9 of the proposed Regulation should be deleted in its entirety or re-crafted as to align with existing state and federal notification requirements.

[Response: The County needs to know that releases to the County owned MS4 are in compliance with state and federal permits in order to comply with AZG2002-002, V.B.3.d. Spills are a potential release.]

Chapter 10 - Violations, Enforcement, Penalties, and Authority

30. Cease and Desist Orders – 1005

Any person notified of a Cease and Desist Order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply with the emergency order, the Director may take such steps as deemed necessary to prevent or minimize harm to the MS4, Waters of the County, or Waters of the U.S., and/or endangerment to persons or to the environment A person that is responsible, in whole or part, for any discharge presenting imminent endangerment shall submit

a SWPPP modification describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Director within 48 hours of receipt of the order.

APS requests that "Waters of the County" and "Waters of the U.S." be eliminated from this Subsection since the intent is to protect the County's MS4.

[Response: The term "waters of the County" has been removed.]

Chapter 11 - Post-construction Stormwater Management

31. For Chapter 11, APS also requests that the County limit the scope to those activities that discharge to the County MS4.

[Response: The definition "Storm Drainage System" is intended to regulate water that is discharged or has the potential to discharge from a site to the County MS4, unless regulated by NPDES permit or otherwise exempted. Onsite retention basins within a property wholly with an owner's control and which cannot overflow offsite would not be regulated.]

32. Applicability - 1101(1)

The post-construction requirements of this Chapter apply to permanent Stormwater management facilities, systems, and/or devices. Stormwater management during construction activities is regulated pursuant to Chapter 6 of this Regulation.

It is not clear if the post-construction permit is a separate permit. Please clarify.

[Response: Per 1103.1, a post-construction permit is required.]

APS is continuing to review Chapter 11 and will be in communication with the County regarding any additional concerns.

Southwest Gas

[Note: Maricopa County responses to the comments are included throughout the document in brackets in bold, italic font]

VIA ELECTRONIC MAIL (ssnitzer@mail.maricopa.gov)

Mr. Stan Snitzer
Maricopa County
Environmental Services Department
1001 N. Central Ave., Suite 201
Phoenix, Arizona 85004

Re: Comments on Maricopa County Stormwater Quality Management and Discharge Control Regulation

Dear Mr. Snitzer:

Southwest Gas Corporation (Southwest) is a local gas distribution company providing natural gas service to residential and commercial customers in Maricopa County. Southwest maintains over 10,000 miles of pipeline located throughout the county and submits the following comments on Maricopa County's proposed stormwater quality management and discharge control regulation, as published in the Arizona Administrative Register on February 27, 2009.

Southwest believes Section 5 of A.R.S. § 49-112 incorrectly states "Showing of Good Cause" is "not applicable" to these regulations. Maricopa County should be required to demonstrate why A.R.S. § 49-112 is "necessary to promote" more stringent requirements than is already provided by both the Federal and State agencies. As written, A.R.S. § 49-112 applies to communities that do not meet the Federal requirements for population density. The new regulation also requires "a Pre-Construction and Construction Phase Site Plan" and a "Post-Construction Report". There is no indication these two documents are one in the same, and there is no indication that either one of them are the same as the State required SWPPP. Additionally, the Preconstruction Plans must be submitted 30 days prior to construction. Inclusion of areas with a low population density, the two additional plans and the lengthy review period are all more stringent than Federal and State regulations. Southwest believes the County needs to demonstrate why it is necessary to promote these more stringent requirements.

In the same fashion Section 6 merely states there are no studies without explaining why the studies are not needed or have not been done. Requiring more stringent regulations does cause economic, small business and consumer impacts not considered in the federal and state regulations. Not analyzing these impacts seems like a very serious procedural flaw in the process of adopting new regulations.

Southwest supports the comments submitted by the Arizona Chamber of Commerce on March 27, 2009 and strongly agrees that additional time is needed to comment on the proposed regulations in order to make them more effective and enforceable over the long run.

More over, the proposed regulation appear to be written for area wide projects, such as subdivisions and commercial developments, that disturb blocks of land and which require extended periods of time for completion. Surface disturbance associated with the construction and maintenance of pipelines is totally unlike area construction activities. During initial construction and / or maintenance of pipelines, surface disturbance is restricted to long narrow corridors that typically cross several drainage features. The disturbance activities are also completed within very short periods of time. For these reasons, Southwest is recommending that a linear facility permit be adopted for utility corridors as the State of California did in 2003.

[Response: The Arizona Department of Environmental Quality required Maricopa County to come under coverage of its Arizona Pollutant Discharge and Elimination System (AZPDES) General Permit for Discharge from Small Municipal Separate Storm Sewer Systems (MS4), AZG2002-002. The requirements of the proposed regulation allow the County to comply with the requirements of the permit, as authorized by the Board of Supervisors on December 17, 2007.

The County requirements are no more stringent than the minimum requirements of the ADEQ AZDPDES General Permit, AZG2002-002, that applies to the County. The review time of 30 days for construction plan approval is set as a maximum, to provide owners with planning tool and a requirement for the county.]

On a specific level Southwest is concerned about the following issues:

1. Construction permits are required for disturbance activities in unincorporated portions of Maricopa County. It would be far more prudent to provide additional language to the existing construction permit to cover all SWPPP related issues without having to review individual projects.

[Response: The County's General Permit, V.B.4.c., requires review of all site plans before ground is broken at the construction site and verify that the BMPs for the site are appropriate.]

2. There is no description of what needs to be included in the Pre-Construction and Construction Phase Site Plan.

[Response: The SWPPP that the owner or operator has prepared in accordance with the requirements of their ADEQ construction general permit is to contain the plan for utilization of Best Management Practices (BMPs) for all phases of construction to include pre-construction. ADEQ SWPPP requirements are included in the General Permit for Construction. Post-construction requirements are also covered in the requirements of the ADEQ construction general permit. The Maricopa County post-construction requirements are listed in Chapter 11 of the regulation. Administrative guidance for submission to the department will be provided by the department.]

In the first response on the second page, I would reference the General Permit number AZG2002-002. In the response to their question #2 there needs to be a space between "Chapter 11" and "of the regulation."

3. The following is a list of concerns relative to the required content of Post-Construction Reports.

- The statement that "some applications covering large areas to have the report prepared by a professional licensed engineer" is misleading. Many of the calculations required by A.R.S. § 49-112 require the knowledge of professional engineer and in order to limit liability it would not be prudent for a company to use a professional who is not a licensed engineer. While the state recognizes the need for certification by a professional licensed engineer in some cases, there is no provision in these regulations that releases a company from liability should the state fail to require certification by a professional licensed engineer.
- Maps with 2 foot contour intervals would most likely require an individual topographic survey for each project. If this is required, the total cost of preparing a permit application would be very significant.
- "Soils...soil tests and boring." This is not appropriate for projects which return the surface to its original contour. Maricopa County should justify the need for this kind of information in Section 5 of the A.R.S. § 49-112 Preamble.
- "Design computations for stormwater management practices." While this may be appropriate for permanent management practices, it is not appropriate for temporary BMPs which are only intended, by federal and state
- law, to reduce the concentration of contaminants. They never were intended to be designed for site specific hydrologic conditions to meet specific discharge standards.
- "Delineation of the pathways of all concentrated flows." This is a Pandora's box of differing opinions regarding when the flow in a swale changes from sheet flow to concentrated flow.
- "Complete delineation of the flow paths used for calculating the time of concentration for pre-development." This may be appropriate for permanent management practices, it is not appropriate for temporary BMPs. BMPs never were intended to be designed for site specific hydrologic conditions to meet specific discharge standards.

[Response: The comments mentions "temporary BMPs" and "returning the surface to the original contour." Per section 1101.1, post-construction requirements apply to permanent stormwater facilities.]

3. Chapter 12 - Fees: While the fees for the various Plan Reviews are higher than fees for air quality permits, non-stormwater permits and stormwater permits in other states, the fee for inspections is unprecedented. There also are no provisions in the regulation to limit the number of inspections that can be made of a project. Either the involuntary inspection fees should be included in the Plan Review fees or limitations are needed on the frequency of inspections. Compliant operators should be provided the ability calculate an accurate cost of compliance prior to the start of construction.

[Response: Fees will be set to charge customers for the cost of the regulatory program. A typical project that does not use permanent stormwater facilities will require one fee for plan review to verify that BMPs for the site are appropriate. The plan approval will stipulate that the owner or operator pay for and request site inspection when BMPs are complete. The separate fees allow an owner to defer payment for inspection if a project is delayed or cancelled.]

If you have any questions regarding the comments above, please contact Bill Shrand, 702-364-3187 or myself.

Sincerely,

Preston Ford
Manager/Central Support
602-484-5355

Greater Phoenix Chamber of Commerce



[Note: Maricopa County responses to the comments are included throughout the document in brackets in bold, italic font]

April 22, 2009

VIA ELECTRONIC MAIL (ssnitzer@mail.maricopa.gov)

Mr. Stan Snitzer

Maricopa County
Environmental Services Department
1001 N. Central Ave., Suite 201
Phoenix, Arizona 85004

Re: *Arizona Chamber of Commerce and Industry and Greater Phoenix Chamber of Commerce Comments on Maricopa County Stormwater Quality Management and Discharge Control Regulation*

Dear Mr. Snitzer:

On behalf of their over 4,000 members, the Arizona Chamber of Commerce and Industry and the Greater Phoenix Chamber of Commerce (collectively, the "Chambers") submit the following comments on Maricopa County's proposed stormwater quality management and discharge control regulation as published in the Arizona Administrative Register on February 27, 2009 (15 A.A.R. 434-52). The Chambers submit these comments pursuant to the public participation requirements set forth in A.R.S. §§ 49-371(H) & 49-112(D)(2).

Procedural Concerns

The Chambers appreciate the public outreach that has occurred thus far, but is concerned with the proposal in the February 27, 2009 notice suggesting the proposed stormwater regulation will be heard by the Maricopa County Board of Supervisors on April 1, 2009. This is not sufficient time for comments submitted on or near the March 30, 2009 deadline to be fairly considered. The Chambers

understand that the April 1, 2009 hearing for the proposed regulation may be continued for a reasonable period to provide additional time for thoughtful county consideration of the comments submitted by the Chambers. The Chambers strongly support such action. The Chambers also understand that several of its member companies also plan to submit comments on the pending stormwater regulation. Because of this, the Chambers encourage the county to continue the consideration of the proposed regulation for at least 30 days after March 30, 2009 to allow for adequate evaluation of (with potential additional stakeholder meetings) and written responses to all comments received by the March 30, 2009 comment deadline.

Jurisdictional Scope of Proposed Stormwater Regulation

The clear legislative intent behind A.R.S. § 49-371 was to authorize counties operating small municipal stormwater sewer systems ("MS4s") within urbanized areas to adopt ordinances, rules, or regulations regulating actual discharges to such MS4 systems. See, e.g., A.R.S. § 49-371(I). Consequently, to the extent that a county's ordinance, rule, or regulation adopted pursuant to A.R.S. § 49-371 attempts to regulate discharges to "waters of the United States," "waters of the county," "storm drainage systems," or "county's stormwater conveyance system" that are not part of the county's regulated MS4, the county does not have authority to enact such requirements. Further, A.R.S. § 49-371(B) provides that any ordinance, rule, or regulation adopted under A.R.S. 49-371 shall not be more stringent than or conflict with any requirement of the federal Clean Water Act. Any provisions attempting to establish requirements beyond the federal Clean Water Act are therefore not authorized.

Contrary to ARS § 49-371, the county's proposed stormwater regulation attempts to extend the county's jurisdiction beyond that envisioned under the authorizing legislation and beyond the jurisdictional scope of the federal Clean Water Act. For instance, the proposed regulation includes a broad definition for "waters of the County" and then includes several provisions (Chapter 8(1), Chapter 10(§1005(1), (2) & §1007(1)(A), (2)(C)), and Chapter 11(§1101, §1102(2), & §1104(3)) regulating activities that may discharge into such "waters," regardless of whether such waters are actually part of the regulated MS4 or otherwise constitute jurisdictional "waters of the United States" under the federal Clean Water Act. The proposed regulation also attempts to regulate direct discharges into "waters of the United States" at the same locations even if such discharges may not be into the regulated MS4. Finally, the proposed regulation attempts to regulate discharges into drainage features or structures that may not qualify as part of the county's MS4.

In summary, the jurisdictional scope of the proposed regulation should be appropriately narrowed to apply only to activities that result in actual discharges of stormwater or authorized non-stormwater into the county's MS4 within the unincorporated, urbanized areas of the county. Similarly, any prohibitions regarding illicit discharges into the county's MS4 within the unincorporated, urbanized areas of the county should be limited to illicit discharges into the regulated MS4. For instance, the proposed regulation defines "illegal discharge" as any direct or indirect non-stormwater discharge to a storm drainage system except as otherwise exempted. The proposed regulation contains a similar definition for "illicit connection". "Illegal discharge" and "illicit connection" and any related provisions

should be limited to discharges of unauthorized non-stormwater or illicit connections into the regulated MS4.

Further, the regulation should define “MS4” or “municipal storm sewer system” consistent with the AZPDES general permit for small MS4s and consistent with the definition of MS4 from the federal regulations (see 40 C.F.R. § 122.26(b)(8)). Specifically, MS4 should be defined as the system of conveyance (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned and operated by the county within the unincorporated, urbanized areas of the county that discharges to “waters of the United States” and is designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

Any terms and any references to such terms inconsistent with the jurisdictional scope or limit of the proposed regulation, such as “waters of the county,” “drainage system,” and/or “storm drainage system,” should be removed from the proposed regulation consistent with the above discussion. Further, any reference to discharges to “waters of United States” as constituting a violation of the proposed regulation should be removed. The scope of the regulation is limited to actual discharges to the regulated MS4, not generally to discharges to “waters of the United States.” Such discharges are addressed and regulated under Arizona’s Pollutant Discharge Elimination System program and under the federal Clean Water Act.

[Response: Reference to “waters of the County” have been removed from the regulation.]

The County is subject to the conditions of Arizona Pollution Discharge Elimination System (AZPDES) permit number AZG2002-002. Permit condition V.B.3.a. requires the County to implement a program to detect and eliminate illicit discharges into the small MS4, with exception lists. Permit condition V.B.3.c. requires the County to prohibit non-stormwater discharges into the storm sewer system.]

Chapter 3 – Definitions

As noted above, the definition of MS4 should be revised consistent with the definition of MS4 in the AZPDES general permit for small MS4s and the definition of MS4 from the federal Clean Water Act regulations (see 40 C.F.R. § 122.26(b)(8)). Similarly, the proposed definitions for “drainage system,” “stormwater drainage system,” and “waters of the county” should be removed from the regulation. Further, appropriate modifications should be made to all of the remaining definitions (including the definitions for “illegal discharge” and “illicit connection”) to reflect the appropriate jurisdictional limitations of the proposed regulation, namely that it only regulates activities within the unincorporated, urbanized area of the county that actually discharge to the county’s MS4.

A.R.S. § 49-371(F) also provides that for purposes of adopting an ordinance, rule, or regulation pursuant to A.R.S. § 49-371, a county must use the definitions prescribed in A.R.S. § 49-255. A.R.S. § 49-255 includes definitions for “AZPDES,” “discharge,” and “indirect discharge.” Maricopa County's

proposed stormwater regulation uses definitions for these terms that do not track the corresponding definitions in A.R.S. § 49-255.

To be consistent with A.R.S. § 49-255 and with A.R.S. § 49-201(22), the term “waters of the United States,” to the extent it is needed in the proposed regulation, should be defined as those waters covered by the definition of “navigable waters” in Section 502(7) of the federal Clean Water Act.

[Response: The definition for AZPDES has been changed to the definition in A.R.S. 49-255, "AZPDES" means the Arizona pollutant discharge elimination system program as adopted under section 402(b) of the clean water act. The definition "discharge" has changed to be consistent with A.R.S. 49-255. "Waters of the U.S" is not defined in A.R.S. 49-255.]

Chapter 4 – Applicability

The Chambers appreciate the language in the first and last sentences of this Chapter. However, as noted above in the discussion on the jurisdictional scope of the proposed regulation, the middle sentences should be appropriately narrowed to clarify that the regulation applies only to activities that result in actual discharges of stormwater or authorized non-stormwater into the county’s MS4 within the unincorporated, urbanized areas of the county unless otherwise exempt in the regulation or by statute (see A.R.S. § 49-372(D)). The Chambers also are concerned with the reference in Chapter 4 to a prohibition on “polluted stormwater,” which is an undefined term. This reference should be removed from the proposed regulation.

[Response: Stormwater and pollutant are defined individually in chapter 3.]

Chapter 5 – Illicit Non-Stormwater Discharges and Connections

The prohibition language in Section 501(1) of Chapter 5 should be amended to remove any reference to discharges into the “storm drainage system.” In fact, the prohibition should be limited to potential unauthorized non-stormwater discharges into the regulated MS4. In addition, the language should be modified to clarify that the prohibition applies except as otherwise provided in Chapter 5 or in any other location in the regulation. Section 501(2) should be modified to remove any reference to an illegal discharge to any “storm drainage system,” rather the focus should be on a potential illegal discharge to the regulated MS4. In addition, Section 501(2) (and perhaps elsewhere in the proposed regulation) should reference or incorporate the language in A.R.S. § 49-371(E) that provides that the county may not regulate certain exempt activities or discharges under federal and state statutes and regulations.

It also is not clear that the county has authority to regulate actual connections to the MS4 under its authority under A.R.S. § 49-371. Rather, it appears that its authority is limited to prohibition of illicit discharges. Moreover, the provisions addressing illicit connections may be difficult to follow and implement given the nature and potential breadth of the MS4 (when compared to addressing illicit connections into a sewage collection system consisting of well defined pipelines or similar conveyances).

[Response: Section 501.2. has been changed to incorporate A.R.S. 49-371(E). Per ADEQ permit AZG2002-002, VI.E. the County has a duty to take all reasonable steps to prevent discharge. Prohibition of illicit connections is the County's effort to comply to the maximum extent practicable as required by AZG2002-002, V.A., General Requirements.]

Chapter 6 – Construction Site Stormwater Runoff Pollution Control

The Chambers recognize that the intent of the provisions in this Chapter are to comply with the provisions of 40 C.F.R. § 122.34(b)(4) and corresponding provisions in the AZPDES general permit for small MS4s. However, the Chambers have several concerns with the approach being pursued in this Chapter. For instance, the Chambers disagree that the federal regulations and/or the AZPDES general permit for small MS4s require a separate county permit program. Rather, the federal regulations and the AZPDES general permit for small MS4s merely lay out certain minimal program components that the operator of the MS4 should implement. Additionally, the authorizing legislation for the proposed regulation provides in pertinent part that “except as required by the [federal Clean Water Act], a county may not require a permit from any person with a federal or state pollution discharge elimination system permit regulating the same activity at the same location.” A.R.S. § 49-371(D).

Based on this background, the Chambers recommend that facilities required to obtain AZPDES permit coverage for construction-related discharges into the county's MS4 not be subject to dual permitting (in fact, the authorizing statute (see A.R.S. § 49-371(D)) mandates this approach). Additionally, the sediment and erosion control, site plan review, and other related components of the county's program can be deemed to be satisfied through the submittal of the Notice of Intent under the AZPDES construction general permit and making the required SWPPP available for review by the Maricopa County Environmental Services Department (in addition to the BMP requirements in Chapter 8). Based on this, the Chambers recommend removal of the reference to a separate county permit from Chapter 6, but would support the requirement for owners and operators of construction activities discharging to the regulated MS4 to submit a copy of the NOI to the county and to make the SWPPP available to the county for its review consistent with the language in Section 602(6) of Chapter 6.

In addition to the above substantive comments, the Chambers strongly recommend that the county consider holding several working sessions with all interested stakeholders to work out acceptable language for the construction site stormwater portion of the proposed regulation (this also should include a discussion of necessary post-construction management provisions (see comments to Chapter 11)).

[Response: ADEQ permit AZG2002-002, Section V.B.4.c. requires the County to review all site plans. At the suggestion of stakeholders, the County will not require owners or operators to obtain a permit for construction activities. However, the regulation has been modified to require owners or operators to submit plans for

construction site stormwater runoff control to the County and receive plan approval prior to breaking ground.]

Chapter 7 – Industrial Activity Discharges

The Chambers respectfully request that Section 701(1) be removed from the proposed regulation because it creates double enforcement exposure for potential compliance issues with federal or state stormwater permits, including the federal MSGP or the state equivalent of such permit. The Chambers believe that the other provisions in Chapter 7 adequately address any concerns posed by potential industrial discharges to the county's MS4 by requiring the submittal of the NOI to the county and authorizing the reporting to EPA and/or ADEQ of entities found to not have proper permit coverage.

[Response: The County needs to know that discharges to the County owned MS4 are in compliance with state and federal permits in order to comply with AZG2002-002, V.B.3.d. A.R.S.49-372(E) prohibits double enforcement.]

Chapter 8 – Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices

Consistent with the discussion above regarding the jurisdictional scope of the proposed regulation, Chapter 8 should be revised to remove any reference to the potential of stormwater discharges to cause or contribute to pollution of "storm drainage systems," "waters of the county," or "waters of the United States." Rather the requirement to implement appropriate BMPs should be limited to actual discharges of stormwater or authorized non-stormwater into the regulated MS4 within the urbanized, unincorporated areas of the county.

[Response: The term "waters of the County" has been removed.]

Chapter 9 – Notification of Spills

The Chambers strongly oppose the spill reporting language in this Chapter and respectfully request that it be removed from the proposed regulation. Spill reporting is already more than adequately covered under existing federal and state Superfund and Emergency Planning laws and regulations. These existing spill reporting requirements contain procedural safeguards and objective spill reporting criteria that must be part of any spill reporting requirement.

[Response: The County needs to know that releases to the County owned MS4 are in compliance with state and federal permits in order to comply with ADEQ permit AZG2002-002, V.B.3.d. Spills are a potential release.]

Chapter 10 – Violations, Enforcement, Penalties, and Enforcement

This Chapter should be removed in its entirety. Enforcement of county stormwater ordinances is already addressed under A.R.S. § 49-372. A simple reference to the terms of A.R.S. § 49-372 would be sufficient to address enforcement under this proposed regulation. Any additional detail is inappropriate.

[Response: The County has a duty to the regulated community to clearly spell out enforcement provision within the regulation. A.R.S. 49-372 has numerous references and exceptions that reduce clarity. The regulation is written to comply with A.R.S. 49-372.]

Chapter 11 – Post-Construction Stormwater Management

Similar to the concerns with Chapter 6 regarding construction sites, the Chambers are concerned with the dual permitting requirement, which does not appear to be mandated by the federal regulations or the AZPDES general permit for small MS4s. In fact, the Chambers believe that the post-construction obligations can be addressed by (1) making a finding in the proposed regulation that stabilization under a required construction general permit and the filing of a Notice of Termination after stabilization are sufficient to satisfy the post-construction requirements; and (2) providing a general requirement that BMPs used for final stabilization be appropriately operated and maintained

[Response: The terms of AZG2002-002, section V.B.5. are prescriptive, stating that the County develop, implement and enforce a post-construction stormwater management program, including regulation, BMP strategies, procedures to ensure compliance, and ensuring adequate long term operation and maintenance. The regulation requirement is not dual permitting. The ADEQ Construction General Permit AZG2008-001 merely requires description of post-construction stormwater BMPs.]

The Chambers sincerely appreciate the opportunity to submit the above comments on the county's proposed stormwater regulation. The Chambers respectfully request that Maricopa County revise its proposed stormwater regulation in accordance with these comments. In particular, the Chambers reemphasize its request that the county continue the consideration of the proposed regulation for at least 30 days after March 30, 2009 and also consider holding additional stakeholder meetings to work through the issues identified above.

Sincerely,

David P. Kimball, III

Chairman, Arizona Chamber of Commerce and Industry Environment Committee

Chairman, Greater Phoenix Chamber of Commerce Environment Committee

Jeff Homer

Co-Chairman, Arizona Chamber of Commerce and Industry Environment Committee

cc: Julie M. Lemmon, Esq. (jmlemmon@att.net)

Home Builders Association

[Note: Maricopa County responses to the comments are included throughout the document in brackets in bold, italic font]

Stan Snitzer
Maricopa County Environmental Services Department
1001 N. Central Avenue
Suite 201
Phoenix, Arizona 85004

**Re: Home Builders Association of Central Arizona - Comments on Proposed
Maricopa County Stormwater Ordinance**

Dear Mr. Snitzer:

The Home Builders Association of Central Arizona (“HBACA”) offers the following comments on the proposed stormwater ordinance recently published in the Arizona Administrative Register by Maricopa County. *See* 15 Ariz. Admin. Reg. 434 (February 27, 2009). The ordinance would apply to urbanized unincorporated areas of the County.

HBACA has over 800 members and represents builders, developers, contractors and others engaged in the development and construction of single-family homes and apartments. Some of these construction projects occur within urbanized unincorporated areas of Maricopa County, and would therefore be potentially subject to the proposed ordinance if the construction activity resulted in a discharge of pollutants to the County’s municipal separate storm sewer system (“MS4”). The HBACA and its members therefore have a strong interest in the proposed regulation. The same construction activities that would be regulated by the proposed ordinance already require a permit authorization from ADEQ under the AZPDES Construction General Permit (“CGP”), AZG2008-001. The HBACA has a particularly strong interest in avoiding duplicative or inconsistent regulation.

Regulatory Framework

EPA’s Phase II NPDES regulations, adopted on December 8, 1999 (*see* 64 Fed. Reg. 68722) require small municipalities meeting certain criteria to secure a permit for discharges from their MS4 to waters of the United States. The urbanized areas within unincorporated portions of Maricopa County qualify as a small municipality under the Phase II regulations.

The Phase II regulations set forth six “minimum control measures” that small MS4s must implement. One of these control measures is construction site stormwater runoff control. Small

MS4s must develop, implement and enforce a program to reduce pollutants in stormwater runoff to the MS4 from construction activities of one acre or more in size (or even smaller if part of a larger common plan of development). The program must include an ordinance or other mechanism to require erosion and sediment controls, sanctions to ensure compliance (to the extent allowed under state and local law) and procedures for site plan review. *See* 40 C.F.R. § 122.34(b)(4). A second minimum control measure required by the Phase II regulations is the development of strategies (including structural and/or non-structural BMPs) to address post-construction stormwater management in new developments and redevelopment. *See* 40 C.F.R. § 122.34(b)(5).

In Arizona, A.R.S. § 49-371 (adopted in 2008) provides the authority for counties to adopt local stormwater quality control programs, under certain conditions. A county is authorized to adopt and implement ordinances, rules or regulations “necessary to comply with the minimum requirements of the clean water act,” potentially including issuance of permits for some activities. *See* A.R.S. § 49-371(A)(2). However, except as required by the Clean Water Act (“CWA”), a county may not require a permit from any entity that has secured a federal or state stormwater discharge permit for the same activity (in the case of home builders, this means securing coverage under the CGP). *See* A.R.S. § 49-371(D). In addition, no ordinance, rule or regulation adopted by a county shall be more stringent than or conflict with any requirement of the CWA. *See* A.R.S. § 49-371(B).

In light of that background, the HBACA has numerous concerns with the scope and content of the County’s proposed stormwater ordinance. The HBACA also has a concern with the process and timing of this ordinance.

Process comment

A.R.S. § 49-371(H) sets forth the process by which a county may adopt a stormwater ordinance. That section requires a county to publish notice of a proposed ordinance in the Arizona Administrative Register, which occurred on February 27. *See* 15 Ariz. Admin. Reg. 434. The statute also requires a county to accept comments for a period of 30 days and to prepare a written response to those comments. In this case, the 30 day comment period expires on March 30 (the first business day after Sunday March 29, which is the 30th day after publication of the notice). Yet a hearing before the Board of Supervisors was tentatively set for April 1, two days after the end of the comment period. It is difficult to believe the County could review, much less respond to, public comment in that two day period. We understand that the Board of Supervisors hearing has been delayed for at least two weeks, but that still gives the County very little time to review the significant comments provided below. The HBACA urges the County to engage stakeholders in additional discussions regarding the scope of the proposed

ordinance, and to defer any hearing before the Board of Supervisors until those discussions have been completed.

Substantive Comments

The County Has no Authority to Require A Permit for Construction Site Runoff Where Coverage is Obtained Under the CGP: The County takes the position (*see* Section 602(2)) that duplicative permitting at the State and County levels is required by EPA's Phase II regulations and the ADEQ small MS4 general permit. However, neither the Phase II regulations nor the ADEQ general permit for small MS4s mandate that a separate *permit* be issued by the small municipality. The Phase II regulations require an "ordinance or other regulatory mechanism to require erosion and sediment controls" at construction sites of more than one acre in size, as well as requirements to control waste, to review site plans, and to conduct inspections. *See* 40 C.F.R. § 122.34(b)(4)(ii). These obligations do not require issuance of a county permit in order to be satisfied. Nowhere in the regulations, or the preamble to the final regulations, is there a specific requirement for a small municipality to adopt a separate permit program for runoff from construction sites that are already required to obtain permit coverage under the CGP. Because such a permit program for construction sites is not "required" by the CWA, the County is precluded from imposing a permit requirement on such sites by A.R.S. § 49-371(D).

For construction sites obtaining coverage under the CGP, the County ordinance can and should simply require compliance with the requirements of the CGP, which addresses all the elements of 40 C.F.R. § 122.34(b)(4)(ii) as well as additional requirements that go beyond those required by the Phase II regulations (e.g., monitoring in certain situations). Such an approach would be consistent with 40 C.F.R. § 122.35(b) (MS4 may be excused from implementing a minimum control measure identified in the Phase II regulations if the NPDES permitting authority already addresses that measure). It also would be consistent with the general premise that dual permitting is to be avoided. *See* A.R.S. § 49-203(D) (ADEQ must integrate water quality programs and avoid duplication and dual permitting to the maximum extent possible).

The HBACA's obvious concern with dual permitting is that delays and/or inconsistent requirements may result from two different entities reviewing the same control measures (e.g., sediment or erosion controls that are deemed acceptable under the CGP might be rejected by the County, or vice versa). This would result in an unworkable situation for site operators.

[Response: AZG2002-002, Section V.B.4.c. requires the County to review all site plans. At the suggestion of stakeholders, the County will not require owners or operators to obtain a permit for construction activities. The Regulation has been modified to require owners or operators to submit plans for construction site stormwater runoff control to the County for review. The owner or operator must receive plan approval prior to breaking ground.]

The Draft Ordinance Attempts to Regulate Some Discharges that the County Has No Authority to Regulate:

(a) The proposed ordinance attempts to regulate all discharges to the MS4, and then defines MS4 as anything that collects or conveys stormwater. The definition of “small municipal separate storm sewer system” at 40 C.F.R. § 122.26(b)(16) is limited to systems that ultimately discharge to waters of the United States. The scope of the ordinance needs to be limited to discharges to the MS4 that ultimately may reach a water of the United States. In some housing developments, streets and sidewalks (which can be part of the MS4) are used to convey storm runoff for short distances to retention basins that are designed not to discharge. If there is ultimately no discharge to a water of the United States, a developer or builder should not be subject to the proposed County stormwater ordinance merely because stormwater is briefly conveyed along County streets.

(b) The proposed ordinance also appears intended to apply to discharges directly to waters of the United States, waters of the County, and storm drainage systems, even if not via a MS4. This is evident, for example, in the definition of “discharge” in Chapter 3 (the addition of any substance into the MS4 “or” into waters of the United States) and in the BMP requirements of Chapter 8 (BMPs must be implemented for any activity that may cause contamination of the MS4, a storm drainage system, waters of the county, or waters of the United States).

Both the Phase II regulations (40 C.F.R. § 122.34(b)(4)(i)) and the 2002 small MS4 general permit issued by ADEQ (Part IV.B.4.a) require a program to reduce pollutants and storm runoff to the small MS4, but do not require a small municipality to regulate discharges that do not enter its MS4. Therefore, in light of the directive in A.R.S. § 49-371(A)(2) to adopt a program meeting the minimum requirements of the CWA, the County should not (and probably lacks the legal authority to) adopt an ordinance purporting to regulate stormwater discharges that do not enter the County’s MS4. The ordinance should be revised to clarify that it applies only to discharges of stormwater to the County’s MS4 where those discharges reach a water of the United States. One aspect of this clarification would be to eliminate references in the ordinance to waters of the County, receiving waters and storm drainage systems.

[Response: Reference to “Waters of the County” has been removed from the Regulation. Exemptions to the Construction Site Stormwater Pollution Control provisions are listed in section 603, Exemptions.]

The County is Not Required to Review Every Site Plan, and Review is Not Required to Occur Prior to Construction Commencing:

(a) The proposed ordinance contemplates that the County will review every site plan for construction activities exceeding one acre in size. *See* Section 602(2). The Phase II regulations merely require a “procedure for site plan review.” *See* 40 C.F.R. § 122.34(b)(4)(ii)(D). This does not explicitly mandate review of every site plan. For example, the County could adopt an approach that only projects of a certain size would be reviewed individually, or that a set percentage of site plans would be reviewed, or that the County would simply retain discretionary authority to review site plans at any site (much as ADEQ does with SWPPPs under the CGP). Any of these approaches would constitute a “procedure” for site plan review. Reviewing every single site plan is not necessary to meet the minimum requirements of the CWA, and therefore should not be included in the County ordinance pursuant to A.R.S. § 49-371(A)(2).

(b) The proposed ordinance would require that site plans in most cases be submitted at least 30 working days (i.e., 6 weeks) prior to the actual start of construction. *See* Section 602(5)(a). (An expedited review would be available for a higher fee, but still requires a minimum of 15 days advance notice.) The HBACA is concerned that this could result in delays in project schedules, especially if the County requires several iterations of the plan.

The Phase II regulations do not require review of site plans prior to construction; there is no mention in the rules of when site plan review must occur. *See* 40 C.F.R. § 122.32(b)(4)(ii)(D). In fact, in response to public comment, EPA deleted a requirement in the proposed Phase II regulations that would have mandated pre-construction review of site management plans. *See* 64 Fed. Reg. at 68759 (preamble discussion of this change). EPA recommends, but does not mandate, pre-construction site plan review. *See* 40 C.F.R. § 122.34(b)(4)(iii). However, an EPA recommendation does not rise to the level of a minimum requirement of the CWA, and therefore pre-construction site plan review cannot be mandated in the County’s ordinance pursuant to A.R.S. § 49-371(A)(2).

[Response: The County’s General Permit from ADEQ, AZG2002-002, V.B.4.c., requires that the County review all site plans before ground is broken at the construction site and verify that the BMPs for the site are appropriate.]

The HBACA Supports the Proposed Exemption for Facilities that Do Not Discharge to Waters of the United States: The HBACA supports the provision exemption for construction sites where the operator can prove that there is no reasonable probability that stormwater can leave the site (Section 603(2)). This should be expanded to include situations where stormwater leaves the site but does not enter a MS4 leading to a water of the United States.

The Ordinance Should not Reference “Waters of the County”: The proposed ordinance includes a definition of “waters of the county” (chapter 3, definition 45). As noted above, this term does not need to be included in the ordinance in order to implement the Phase II regulations. Even if it were appropriate to do so, it is not clear under what authority the County

is adopting this definition. Pursuant to A.R.S. § 49-371(A)(2), the County's authority to adopt this ordinance is limited to measures necessary to meet the minimum requirements of the Clean Water Act, which generally governs discharges to waters of the United States and in the case of the Phase II program extends to discharges into MS4s that ultimately reach waters of the United States. The notion of "waters of the County," which is very broadly defined to include irrigation systems and drainage systems, does not appear anywhere in the Clean Water Act and therefore should not appear in this ordinance designed to implement the County's obligations under that statute.

[Response: Reference to "waters of the County" has been removed from the Regulation.]

The Definition of "Best Management Practices" (and Other Provisions) Should be Modified to Reflect the Appropriate Scope of the Ordinance: The Phase II regulations require municipalities to adopt a program to control pollutants in stormwater runoff that enters a MS4. Many definitions and provisions in the proposed ordinance, including the definition of BMPs in Chapter 3, do not reference that limitation. For instance, the definition of "best management practices" encompasses "such other provisions as the Department determine appropriate for the control of pollutants," with no explicit reference to stormwater entering the MS4. The ordinance should clearly and consistently make it clear that its terms apply only to stormwater discharges to a MS4 that ultimately reach a water of the United States.

[Response: Specific occasions when Best Management Practices (BMPs) are required are included in sections of the Regulation other than the definitions. BMPs are required in instances where the Regulation requires prevention of pollutants from entering the MS4.]

The Definition of "Discharge" Should be Modified: The definition of "discharge" encompasses any direct or indirect addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the MS4 or into waters of the United States. For the reasons articulated above and in order to be consistent with the Phase II regulations, the definition should be limited to the addition of pollutants in stormwater introduced into the MS4 where that MS4 connects to a water of the United States. Such a definition would be more consistent with the existing definition of "discharge" in A.R.S. § 49-255(2), with which the County must be consistent. See A.R.S. § 49-371(F).

In addition, the reference in the proposed definition to "pollutants, stormwater or non-stormwater" should be removed because it is confusing and potentially exceeds the County's statutory authority to adopt this stormwater ordinance.

[Response: The definition "discharge" has changed to be consistent with A.R.S 49-255.]

The Ban on “Polluted Stormwater” should be Removed: Chapter 4 states that “polluted stormwater” may not be discharged to the MS4. What does “polluted stormwater” mean? Given that virtually everything can qualify as a “pollutant,” this requirement taken on its face would require treatment to remove (*inter alia*) every particle of dirt or molecule of oil in stormwater. Such a requirement is obviously unattainable. This general prohibition should be removed from the ordinance.

[Response: The definition is consistent with the definitions used by the State of Arizona and in Federal Regulations. For example, 40 CFR 122.2 defines pollutant as dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Some small discharges would not fall within the requirements of the Regulation. The County prefers discretion rather than strict numerical limits that EPA and ADEQ might interpret [or imply] from the controlling Federal statute.]

The Phrase “Receiving Waters” is Unnecessary: The phrase “receiving waters” is used several times in the proposed ordinance (e.g., in the definition of “best management practices”), but is never defined. The common understanding is that receiving waters would refer to the particular water of the United States to which a discharge reports. Because (as noted above) the scope of this ordinance should be limited to stormwater entering the MS4 and ultimately waters of the United States, the HBACA does not believe the phrase “receiving waters” is necessary, and suggests that it be deleted entirely from the ordinance.

[Response: As suggested, the term “receiving waters” has been deleted from the Regulation]

The Proposed Compliance Monitoring Authorities Should be Scaled Back:

(a) The proposed ordinance allows the County to inspect sites, *inter alia*, “to determine performance of any additional duties required by the permit or by state and federal law.” See Section 606.1(B). As noted above, the HBACA does not believe that the County lawfully can implement a permit program for construction site runoff covered by the CGP.

[Response: AZG2002-002, Section V.B.4.c. requires the County to review all site plans as well as to develop and implement procedures for site inspection. At the suggestion of stakeholders, the County will not require owners or operators to obtain a permit for construction activities. The Regulation has been modified to require owners or operators to submit plans for construction site stormwater runoff control

to the County for review. The owner or operator must receive plan approval prior to breaking ground.]

(b) Inspection authorities under this ordinance should not extend to assessing compliance with unspecified “other requirements of state or federal law.” The ordinance is limited to stormwater control, and any accompanying inspection rights should be similarly limited.

[Response: As suggested, Section 606.1.B. has been modified to limit the Section to stormwater requirements of applicable laws and regulations.]

(c) The County has proposed to provide itself with the apparently unlimited right to sample, or require the site operator to sample, whatever and whenever it deems appropriate. See Section 606.1(C)-(D). There is no explicit authority for this in the Phase II regulations or the ADEQ small MS4 general permit; in fact, there is no mention whatsoever in those sources of monitoring as a component of a small municipality’s program. This aspect of the proposed compliance monitoring authority goes beyond the minimum requirements of the CWA and cannot be included in the ordinance, pursuant to A.R.S. § 49-371(A)(2). The HBACA is particularly concerned about the completely open-ended nature of potential requirements that could be imposed under these sections.

[Response: As suggested, Sections 606.1.C. and D. of the February 27, 2009 version of the Regulation have been deleted.]

The Proposed BMP Requirements are in Some Ways Ambiguous and Are Likely Overbroad: Chapter 8 requires development of BMPs for discharges to a storm drainage system, water of the county, water of the United States, or county MS4. For the reasons discussed above, BMPs can only be required in this ordinance for discharges to a MS4 that reaches a water of the United States.

In addition to the foregoing concern, the language in this section is somewhat confusing, particularly in Paragraph 1. The first sentence contains a general requirement to “implement best management practices for stormwater.” The second sentence then requires provision of “reasonable protection from accidental discharge of prohibited materials or other wastes.” It is unclear if that second sentence modifies the first sentence or is an additional requirement. In any event, any final ordinance should tie back to the minimum requirements set forth in the Phase II regulations, which are appropriate erosion and sediment control practices and requirements to control waste at a construction site. The current language, particularly the generic reference to best management practices for stormwater, is overbroad. (For example, it could be interpreted by individual County employees to require development of good housekeeping measures such as are required by the CGP, but which are not referenced in the Phase II minimum control measures.)

[Response: The second sentence in Chapter 8.1. modifies the first sentence. The requirements are included to ensure compliance with AZG2002-002, Section V.B.4.b.]

The Proposed Spill Notification Requirements are Overbroad: Chapter 9 proposes spill reporting requirements for known or suspected releases that result or may result in illegal discharges or pollutants discharging into a storm drainage system, the County's MS4, or waters of the United States. As discussed throughout these comments, attempting to control discharges to a storm drain system is beyond the County's authority unless there is an actual addition of pollutants to the MS4. Therefore, references to the storm drain system and waters of the United States should be deleted. (The HBACA also notes that the CWA already includes spill reporting provisions, *see* 40 C.F.R. Parts 116 & 117, as do CERCLA, WQARF, and a variety of other programs.)

More fundamentally, there is no clear basis in the Phase II regulations for the broad spill reporting requirements proposed. As a result, the County may lack the ability to adopt these requirements because they are unnecessary to achieving the minimum requirements of the CWA, and thus not authorized under A.R.S. § 49-371(A)(2). A general requirement to take actions to prevent spilled materials from entering the MS4 as part of a stormwater discharge may be within the ambit of the Phase II regulations, but the notification and recordkeeping requirements of proposed Chapter 9 clearly go beyond anything contemplated in the Phase II rules.

[Response: The County needs to know that releases to the County owned MS4 are in compliance with state and federal permits in order to comply with AZG2002-002, V.B.3.d. Spills are a potential release.]

The Proposed Enforcement Provisions are Overbroad: A.R.S. § 49-372 articulates how municipal ordinances regulating stormwater may be enforced. That section provides that the enforcement provisions of A.R.S. §§ 49-261, 49-262 and 49-263 are generally available to a county. The proposed enforcement provisions of the ordinance go beyond what is authorized in statute in several respects: (1) providing enforcement for nuisances (Section 1001(2)); (2) authorizing cease and desist orders (Section 1005); (3) including provisions for suspension and revocation of permits (Section 1007); and (4) including authority for imposition of abatement assessments and liens (Section 1010). These provisions are not authorized pursuant to A.R.S. § 49-372 and should be removed from the ordinance.

[Response: Responses to (1) and (4): A stormwater violation may also be a nuisance as explained in 1001(2), and, if a violation is a nuisance, the abatement and lien provisions of 1010 apply. (2) A cease and desist order is necessary for an application for an injunction. Injunctions are specifically provided for in A.R.S. 49-262.A. (3) A.R.S. 49-371.A.3 is County authority to establish a permit program and specifically includes revocation and enforcement of permits.]

Post-Construction Stormwater Management: The HBACA has numerous comments on this section.

(a) The “objective” of protecting water quality “to the maximum extent practicable” is both ambiguous (we have no idea what it means) and not mandated by 40 C.F.R. § 122.34(b)(5). It should be deleted.

[Response: In addressing what the stormwater permit of an operator of a regulated small MS4, such as the County, will require, the EPA in 40 CFR 122.34(a) states “Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP)....”]

(b) For the same reasons described above, we believe the County lacks the authority to require post-construction *permits* (Section 1103.1). The Phase II regulations do not require a permit program, and thus such a program is not a “minimum requirement” of the CWA. The County therefore cannot include the requirement to obtain a permit in its ordinance, although the Phase II regulations and the small MS4 (*sic*) general permit do contemplate adoption of standards relating to the post-construction period.

[Response: The terms of ADEQ permit AZG2002-002, section V.B.5. are prescriptive, stating that the County must develop, implement and enforce a post-construction stormwater management program, including regulation, BMP strategies, procedures to ensure compliance, and ensuring adequate long term operation and maintenance. The Regulation requirement is not dual permitting. The ADEQ Construction General Permit AZG2008-001 merely requires description of post-construction stormwater BMPs.]

(c) To the extent other County documents (such as drainage policies and manuals) are referenced in Section 1104, either: (1) it must be clarified that those documents are non-binding; or (2) if they are binding, the substance of the documents must be opened to public comment during this process, as this ordinance would create potential enforcement obligations for failure to comply with the referenced documents.

[Response: The Regulation states that the documents are references for guidance. Guidance means that the documents are non-binding.]

(d) Phrases such as “adverse impacts” (Section 1104(4)) and “sensitive resources” (Section 1104(9)) need to be defined or explained. Statements that “additional performance criteria” may be necessary, without explanation, are too open-ended and vest too much discretion in the hands of County regulators.

[Response: The dictionary definition of adverse “unfavorable or antagonistic in purpose or effect” would be used. The desired effects are listed in the introductory section to the chapter, Section 1101. As suggested, the Section 1104(9) has been edited to remove “sensitive resources.”]

(e) References are made to the “most recent version” of other County documents (e.g., Section 1105). As those documents change, are the requirements of the ordinance expected to change as well? What happens to projects that are already built – will these changes apply retroactively? If so, that could lead to unfair results.

[Response: To address the comment, the wording “at the time the application is made” has been added to Section 1105.]

(f) It is unclear why there is a distinction drawn between developments of 640 acres and smaller developments in Section 1106.01(A), as both seem subject to the same requirement.

[Response: Section 1106.01.A has been rewritten to improve the clarity.]

(g) The second sentence of Section 1106.01(B) is vague and the intent needs to be clarified.

[Response: The second sentence of Section 1106.01.B has been rewritten to improve the clarity.]

(h) The County states in Section 1106.02 that “some” reports may need to be prepared by a licensed professional, with no further explanation. Generally, the HBACA does not believe this is necessary. If the County has a specific scenario in mind, it should be clearly articulated.

[Response: The reference is related to 1106.02.I, to remind an owner to determine if the size and scope of their project requires submittal by an Arizona licensed professional based on State regulations.]

(i) As a general matter, the extensive and onerous post-construction requirements of the ordinance (report, long-term O & M plan, multiple recordation requirements, etc.) of the ordinance go well beyond what is required by the Phase II regulations (i.e., the minimum requirements of the CWA), and thus may be outside the County’s authority. The HBACA would like to discuss further with the County how it envisions this process working.

[Response: Based on the advice of Counsel, the Regulation requirements have been prepared to address the permit requirements of ADEQ permit AZG2002-002.]

Please contact me should you have any questions on the contents of this letter.

Sincerely,
FENNEMORE CRAIG, P.C.
Spencer Kamps
Vice President of Legislative Affairs

City of Mesa

Written Comments Received from the City of Mesa Regarding the Proposed Maricopa County Stormwater Quality management and Discharge Control Regulation.

[Note: Maricopa County responses to the comments are included throughout the document in brackets in bold, italic font]

Maricopa County Environmental Services Department (MCESD) has issued their Draft Maricopa County Stormwater Quality Management and Discharge Control dated January 13, 2008, with final comments from stakeholders due by 5 p.m. on Friday, February 06, 2009. The City of Mesa (City) considers itself a stakeholder for this process since the City owns infrastructure and performs construction activity in the Maricopa County Department of Transportation, Flood Control District of Maricopa County, or other County-owned rights-of-way or that may discharge across or onto MCDOT, Flood Control District or other County-owned rights-of-way. These comments only address the permitting associated with construction activity.

NEED FOR DUAL PERMITTING

The draft states that dual permitting is required under 40 C.F.R.122.34(b)(4)(i) and by the small municipal separate storm sewer system (MS4) general permit.

Section 602 – Construction Site Permits

An owner or operator who intends to disturb an area of land that is equal to or greater than one acre, or that is less than one acre but is part of a larger plan of development that disturbs one or more acres of soil, must also obtain a permit from the Department and pay any applicable fees set by the Department. This dual system of permitting is as required by Federal law, 40 C.F.R.122.34.b.4.i, and by the general permit for the Maricopa County MS4 issued by the Arizona Department of Environmental Quality, Part V.B.4.a

Nothing in 40 C.F.R.122.34 requires any such dual permitting. The Small MS4 General Permit also does not require dual permitting. It only requires that the County Develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the small MS4 from construction activities, require construction site operators to practice erosion and sediment control and require construction site operators to control waste and properly dispose of wastes, review all site plans for those sites described in Part V, Section B.4.a for potential water quality impacts, and develop and implement procedures for site inspection and enforcement.

[Maricopa County response – The last sentence of the paragraph the City presents has been changed to read as follows: “This dual system of regulation is as required by Federal law, 40 C.F.R.122.34.b.4.i, and by the general permit for the

Maricopa County MS4 issued by the Arizona Department of Environmental Quality, Part V.B.4.a..”]

PART V. STORMWATER MANAGEMENT PROGRAM (SWMP)

B. Minimum control measures.

4. Construction Site Stormwater Runoff Control. The permittee or applicant, as applicable, shall:

a. Develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Department waives requirements for stormwater discharges associated with small construction activity, defined under 40 CFR 122.26(b)(15)(i), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from these sites;

b. Using an ordinance or other regulatory mechanism available under the legal authorities of the small MS4, require construction site operators to practice erosion and sediment control and require construction site operators to control waste and properly dispose of wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. This ordinance must apply, at a minimum, to those sites described in Part V, Section B.4.a.

c. Review all site plans for those sites described in Part V, Section B.4.a. for potential water quality impacts, including erosion and sediment control, control of other wastes, and any other impacts that must be examined according to the requirements of the law or ordinance of Part V, Section B.4.b. Before ground is broken at the construction site, the small MS4 operator shall review the plans and, verify (in written communication with the construction site operator) that the BMPs for the site are appropriate;

d. Develop and implement procedures for site inspection and enforcement of control measures for those sites described in Part V, Section B.4.a.;

The City does not believe that dual permitting is necessary to meet the requirements of the Small MS4 General Permit. Reviews of construction site stormwater pollution prevention plans (SWPPPs) prior to the start of soil disturbance would offer no value or benefit to the County since these plans are considered living documents that change as site conditions change. The County should instead consider reviewing such plans as part of stormwater inspections conducted to ensure compliance with the County rules and not require any submittals other than a copy of the Arizona Department of Environmental Quality (ADEQ) Notice of Intent (NOI) form. In addition, the NOI is already required to be submitted to MS4 owners and operators under the 2008 Construction General Permit (CGP) and by signing an NOI the operator confirms that a SWPPP meeting the requirements of the CGP has been developed. This approach would provide the County with more accurate information while reducing costs to the development

community and relevant City projects, while at the same time keep staffing levels to a minimum (i.e. only employing inspectors to conduct reviews and inspections simultaneously). It is important that the County continue to ensure that development continue to be a viable industry benefitting the County and the City equally.

[Maricopa county response: Maricopa County chooses to recover its costs for provision of plan reviews and inspections related to its required performances of stormwater program regulation of construction activities in its defined municipal separate stormwater sewer system (MS4). In recovery of its costs for those required performance, Maricopa County chooses to implement a user fee.]

The City suggests procedure that plans should not be reviewed prior to ground being broken at the site. Maricopa County is one of 21 Arizona municipalities operating a small MS4 regulated Arizona Pollutant Discharge Elimination System General Permit for Discharge (AZPDES) No. AZG2002-002. Part V.B.4.c states among other things that “Before ground is broken at the construction site, the small MS4 operator shall review the plans and, verify (in written communication with the construction site operator) that the BMPs for the site are appropriate;”]

DRAFT FEE LIST

Discussions with Maricopa County Environmental Services Department (MCESD) personnel, under whom the stormwater program is administered, has indicated that the fee structure was based on those already established and in place for similar services provided under the MCESD On-Site Wastewater Treatment Facilities (OSWTFS) program. These fees are available to the public on the MSED website.

<http://www.maricopa.gov/EnvSvc/WaterWaste/OWS/Fees.aspx>

The draft establishes fees associate pre-construction plan reviews and post-construction plan reviews at a cost of \$1,050.00 for the first review of each plan. This is similar to the fees established under the OSWTFS program for reviews associated with Aerobic Systems with Surface Disposal. In the OSWTFS program, the reviews of these systems are commonly referred to an “engineered system plan reviews.” Engineered system plan reviews are called this because these plans are required to be stamped by a registered Professional Engineer (P.E.). Other, conventional, plan reviews of OSWTFS are a lower cost established at \$550.00 and are not required to be prepared/stamped by a P.E. The cost differential between these two types of reviews is based on the fact that the OSWTFS program maintains on staff a registered P.E. to review and approve engineered system plan reviews. Conventional systems are reviewed by trained OSWTFS employees, but are not registered Professional Engineers.

Neither the Code of Federal Regulations nor the Arizona Department of Environmental Quality (ADEQ) 2008 Construction General Permit (CGP) requires that Storm Water Pollution Prevention Plans (SWPPPs) be prepared by a P.E. In fact, the ADEQ 2008 CGP requires the SWPPP to be developed by the operator of the construction activity (also similar to EPA Multi-Sector General Permit).

[Maricopa County response – The County has established cost recovery fees based upon its prior experience in performing reviews of plans and performance of inspections of small construction sites. The County proposes to establish similar fees where it believes the processes are similarly intricate. The level of expertise to be applied to reviews of plans and sites is not prescribed by the AZPDES permit No. AZG2002-002 for Maricopa County. Maricopa County chooses to review plans via the application of a certain level of expertise. That level of expertise may come from a review performed by professionals such as hydrologists, engineers or soil scientists. Additionally, should an enforcement issue arise the County chooses to rely on a level of expertise seen at the professional level.]

PART III. STORMWATER POLLUTION PREVENTION PLAN (SWPPP) PREPARATION

B. Types of Operators

1. Definition of Operator

The operator shall prepare a SWPPP before submitting the NOI for permit coverage and prior to conducting any construction activity

3. All operator(s) shall sign and certify the SWPPP they will implement in accordance with Part VIII.J.

The City understands that MSED is planning on employing registered Professional Engineers on staff to review all of these plans, but makes no specific requirement that the pre-construction plan be drafted by a P.E., and only indicates that a P.E. prepare post-construction plans were necessary.

Section 1106.03 – “As Built” Plans

When construction is complete the applicant shall submit to the Department an actual “as built” plan for all Stormwater management facilities required per the approved Stormwater permit. The “as built” plan shall show all final design specifications for all permanent Stormwater facilities and if necessary shall be prepared and certified by a licensed professional engineer registered in the State of Arizona.

The City maintains that the County should develop appropriate fees for conventional stormwater plan reviews as it has done with the OSWTFS program. This would reduce the financial burden

on the development community and City of Mesa projects that are required to be permitted by MCESD.

The City further maintains that the need for construction site SWPPP to be prepared by a P.E. should not be required since these plans are considered a living document and are expected to change as site conditions change. Requiring a P.E. to perform these activities would result in the necessity to have these individuals perform the functions of the operator and would therefore require them to be onsite to address any changes to best management practices (BMPs) as site conditions change adding unnecessary costs to relevant City projects.

[Maricopa County response – The fees proposed by the County are for recovery of costs. As noted in Section 1106.03 above the requirement for preparation of an “as built” plan may require the expertise and certification of a licensed professional “..if necessary..”. The level of expertise to be applied to reviews of plans and sites is not prescribed by the AZPDES permit No. AZG2002-002 for Maricopa County. Maricopa County chooses to review plans via the application of a certain levels of expertise. That level of expertise may come from a review performed by professionals such as hydrologists, engineers or soil scientists. Individuals with higher levels of expertise get a salary commensurate with their level of expertise. The County is proposing fees to recover costs associated with its provision of stormwater plan and site review services.]

REVIEW TIMEFRAMES

The draft requires submittal of an SWPPP six weeks prior to the actual start of construction.

Section 602 – Construction Site Permits

5. To obtain a permit the owner or operator must complete the following:

a. Submit to the Department a pre-construction and construction phase Stormwater Site Plan no later than six weeks prior to the actual start of construction.

Discussions with MCESD stormwater program staff indicate that the draft was supposed to provide for four weeks prior to start of construction. The City believes that is more reasonable, but maintains that the County should remove pre-construction plan review requirements altogether.

[Maricopa County response – It should be noted that Section 602 has been modified in the latest draft to reflect a shorter time frame prior to start of construction.

As to removing the requirement for pre-construction plan review: Maricopa County is one of 21 Arizona municipalities operating a small MS4 regulated

Arizona Pollutant Discharge Elimination System General Permit for Discharge (AZPDES) No. AZG2002-002. Part V.B.4.c states among other things that “Before ground is broken at the construction site, the small MS4 operator shall review the plans and, verify (in written communication with the construction site operator) that the BMPs for the site are appropriate;” Thus, to maintain compliance with its own State permit, Maricopa County must review all pertinent site plans for potential water quality impacts.]

Arizona Rock Products Association

February 24, 2009

Stan Snitzer
Maricopa County Dept. of Environmental Services
Stormwater Section
1001 N. Central Avenue Suite 201
Phoenix, AZ 85004

Dear Stan,

Thank you again for allowing your staff to attend our Arizona Rock Product Association's Environmental Committee meeting on Thursday, February 19 and present on the proposed Maricopa County Stormwater Rule. Likewise, I appreciate you for taking the time to visit with me and allow me to discuss our concerns regarding this important issue.

Based on the conversation at our Environment Committee meeting, members understood that the County will require the aggregate mining industry to submit stormwater submittals and fees for construction and post construction of our "new sites". As you can imagine, this was very confusing to our members. This is not currently a requirement but more importantly; these are mining sites. It was our initial understanding that the new Rule would impose no further requirements to our industry other than sending Maricopa County a copy of our Notice of Intent (NOI) to ADEQ for the designated unincorporated and urbanized areas of Maricopa County. This requirement will be redundant and costly. ARPA is suggesting that copying the County on the NOI submittal to ADEQ be sufficient in meeting the requirements for "existing" and "new" sites.

ARPA members understand the need to address stormwater issues on site and have been active in the NPDES programs at the federal and state level. Sites are required to be in compliance with the Clean Water Act and most sites have been covered by the Multi-Sector General Permit (MSGP) for stormwater discharges. As you know the EPA has recently issued its new MSGP and the ADEQ is working on issuing their new MSGP. In the EPA MSGP, Non-Metallic Mineral Mining and "Dressing" is specifically covered in Subpart J - Sector J and now includes all activities related to exploration, construction/development, mining and reclamation (8.J.1.1-8.J.1.4). It is our expectation that compliance with the pending AZPDES MSGP and subsequent submittal of the NOI to Maricopa County, as explained in Chapter 7 of the proposed rule, will suffice for Maricopa County's permit requirements.

Since these are not "construction" sites and water is maintained on site, we feel these facilities should be exempt from further fees or redundant requirements. I look forward to discussing this further as I understand you may have Federal citations that support this argument. I look forward to hearing from you soon. I can be reached at (602) 271-0346.

Regards,



Steve Trussell
Executive Director

April 1, 2009

Steve Trussel
Executive Director
Arizona Rock Products Association
916 West Adams Street
Phoenix AZ 85007-2732

Dear Steve,

First, I wish to thank you and your organization for your interest and willing and helpful participation in the stakeholder process to address the proposed Maricopa County Stormwater Quality Management and Discharge Control Regulation.

In response to your letter of March 12, 2009 and in regards to our March 10, 2009 meeting here with the Arizona Department of Environment Quality (ADEQ), I wish to cover the construction-related concepts you have put forth. I also wish to briefly discuss the topics we covered at our March 10 meeting and information provided to you at our meeting, during our conversations and in e-mails to you and others who accompanied you to the March 10, 2009 meeting.

Maricopa County is one of 21 regulated Arizona municipalities which are State-regulated operators of storm sewer systems subject to the conditions of Arizona Pollution Discharge Elimination System (AZPDES) permit number AZG2002-002. In addition to other permit-required performances, each regulated municipal permittee, including Maricopa County, is required to perform regulation of construction and post-construction activities within their defined jurisdictional area.

Regarding the proposed Maricopa County stormwater regulation and that portion stating that an owner or operator who intends to disturb an area of land in the defined "Urbanized Area" only and which qualifies as being subject to regulation must obtain a for-fee Pre Construction and Post-Construction permit:

- Maricopa County is required by the State of Arizona through the State's AZPDES AZG2002-02 permit to the County to eliminate the discharge of pollutants from construction and post-construction activities in the "Urbanized Area" into the municipal separate storm sewer system (MS4) operated by the County. A copy of the State's permit and an Urbanized Area map has been provided.
- A regulated municipality may choose its own method of covering the costs of performances required by the State of Arizona permit.
- As provided for all regulated Arizona counties in A.R.S. 41-371, Maricopa County chooses to use a user-fee permit issuance system to provide a mechanism for recovery of costs related to the AZPDES permit number AZG2002-002 requirements to perform plan reviews and site inspections of construction and post-construction activity.

You mention the new EPA Multi-Sector General Permit (MSGP) for stormwater discharges in your letter as it was indeed an agenda item and topic of discussion at our March 10 meeting. With ADEQ we discussed in general the aspects of the new 2008 federal MSGP for those few states and Indian Territories where it applies. ADEQ mentioned that the State of Arizona has not yet issued an MSGP for Arizona and that we might not expect much change from the federal MSGP.

Regarding the discussions relative to the MSGP:

- ADEQ mentioned that the State of Arizona has not yet issued an MSGP for Arizona and that we might not expect much change from the federal MSGP.
- The current Arizona MSGP still applies.
- No specific date for issuance of a new Arizona MSGP was mentioned.
- Maricopa County reserved any comments regarding any new Arizona MSGP as it has not seen the proposed permit language.
- Maricopa County will review any new State of Arizona MSGP in relation to changes the State might make to its AZPDES permit regulating the 21 municipalities operating MS4s under the pertinent state permit.
- Maricopa County maintains that its State of Arizona permit number AZG2002-002 requires it to regulate qualifying new construction and post-construction in the defined "Urbanized Area" for Maricopa County whether the construction activity is regulated by the State of Arizona under the its Construction General Permit or the its Multi-sector General Permit.
- That its State of Arizona permit number AZG2002-002 requires Maricopa to regulate qualifying new construction and post-construction in the defined "Urbanized Area" for Maricopa County, whether the construction activity is regulated by the State of Arizona under the its Construction General Permit or the its Multi-sector General Permit was confirmed by comment from ADEQ's Chris Henninger, Supervisor of the Stormwater and General Permits Unit who also attended the March 10, 2009 meeting.

Last, as you mention in your letter and as you had suggested in our meeting of March 10, we have followed your suggestion by the addition of the word "individual" into the appropriate portion of the text of Chapter 6 of the Regulation. You will see that change in the final version of the Regulation which is to be considered by the Board of Supervisors.

I hope that this response helps to bring further clarification to points raised in our meeting of March 10, 2009 and in your letter of March 12, 2009. As I mentioned during our conversations, I believe that it would be beneficial to further discuss the requirements of State of Arizona AZPDES permit AZG2002-002 which spells out what is required of Maricopa County to achieve compliance.

Please feel free to contact me with any further questions you may have regarding the proposed Maricopa County Stormwater Quality management and Discharge Control Regulation.

Sincerely,

Stan Snitzer
Stormwater Program Manager
Maricopa County

Cc; Chris Henninger, ADEQ
John Power, Director Maricopa County Environmental Services